

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ELITE FUEL FOUR, INC.,
IOWA GAS GROUP, INC.,
GAS DEPOT & MINIMART INC.
AND
ISH OBEROI, INDIVIDUALLY**

**UST NO. 198607449
2919 E. 14th, Des Moines, IA**

**ADMINISTRATIVE ORDER
NO. 2010-UT- 16**

**To: Ish Oberoi
9 Elk Run Rd.
Waterloo, IA 50703**

**Elite Fuel Four, Inc.
Reg. Agent, Ish Oberoi
9 Elk Run Rd.
Waterloo, IA 50703**

**Iowa Gas Group, Inc.
Reg. Agent, Shital N. Mehta
438 New York Lane
Elk Grove Village, IL 60007**

**Gas Depot & MiniMart Inc.
Reg. Agent, Farrukh Pasha
2919 E. 14th St.
Des Moines, IA 50316**

I. SUMMARY

This administrative order (order) requires you to (1) immediately empty all the under ground storage tanks (USTS) at the above location and submit a certification of temporary closure; (2) obtain an approved financial responsibility mechanism on the USTS; (3) complete a third party compliance inspection; (4) pay \$945 in annual tank fees and late fees; and (5) pay an administrative penalty of \$10,000 within 60 days of receipt of this order unless the order is appealed as provided in Division VII below. See Division V and VI below for details.

Any questions regarding this order should be directed to:

Relating to technical requirements:

**Paul Nelson, Environmental Specialist
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8779**

Relating to legal issues:

**Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817**

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II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapters 567 Iowa Administrative Code (IAC) 135 and 136. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Richard J. Fuller and other family members (Fullers) are the current owner of property located at 2919 E. 14th St., Des Moines, Iowa. Fullers have been the owner of the property at all times relevant to this order.
2. Chieftain Corporation, an affiliate of Kum & Go, L.C. and an Iowa corporation, entered into a long-term lease with the Fullers dated April 1, 1985. This lease expires sometime in the next three years. During the lease term, Chieftain Corporation registered with the Department as the owner of three 10,000 gallon petroleum USTS at this location and operated the USTS. Chieftain Corporation and Iowa Gas Group, Inc. (Iowa Gas), an Illinois corporation, entered into a purchase agreement on October 1, 2007 followed by an assignment and assumption of the Fullers/Chieftain lease agreement effective November 28, 2007. Upon information and belief, Iowa Gas acquired ownership of the USTS and all rights to operate the USTS pursuant to these lease agreements.
3. Paul Ghuman as the authorized representative of Iowa Gas registered with the Department as the owner of three petroleum USTS at this location on November 27, 2007. Mr. Ghuman is president of Iowa Gas and upon information and belief a principal stockholder. Mr. Ghuman did not identify on the Department registration form any separate entity functioning in the capacity as operator of the USTS.
4. PMMIC, an Iowa insurance company, issued an UST insurance policy and provided the Department a copy of its certificate of insurance covering the USTS at this location. The effective date of the policy was May 8, 2007 to May 7, 2008 and identified "Elite Fuel Four" as the named insured. The policy was renewed effective May 8, 2008 to May 7, 2009. This policy was then cancelled mid-term with an effective date of August 11, 2008.

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5. Gas Depot & MiniMart Inc. (Gas Depot) registered with the Department on March 3, 2009 as the "lessee/operator" of the USTS at this location. The Department received a certificate of insurance identifying Zurich as the insurer and "Gas Depot & Mini Mart, Inc." as the named insured with effective dates of January 27, 2009 to January 27, 2010. This policy expired effective January 27, 2010 and there has been no subsequent approved financial responsibility mechanism for the USTS at this location.

6. Elite Fuel Four, Inc. (Elite Fuel 4) is an Illinois corporation registered with the Iowa Secretary of State and doing business in Iowa. Ish Oberoi is president of Elite Fuel 4 and upon information and belief a principal stockholder. Ish Oberoi is also the president and upon information and belief the principal stockholder in Elite Fuel One, Inc., Elite Fuel Two, Inc., Elite Fuel Three, Inc., Elite Fuel Five, Inc., Elite Fuel Six, Inc. and Elite Fuel Seven, Inc. and Elite Fuel Eight, Inc. all of which are Illinois companies registered with the Iowa Secretary of State (except Elite Fuel Eight, Inc) and doing business in Iowa. Upon information and belief, all of these corporations have owned or operated UST facilities.

7. At all times relevant to this order, Ish Oberoi has been a person in control of, or having responsibility for, the daily operation of the USTS at this location. He has been the primary contact person responsible for maintaining compliance with the regulatory requirements as stated in this order.

8. Gas Depot is an Iowa corporation. Syed Ali is the president and Farrukh Pasha is vice president.

9. By letter dated May 13, 2008, the Department notified Paul Ghuman that the PMMIC insurance policy would be expiring at this site and a number of other UST facilities owned by Iowa Gas or an affiliate of the Elite Fuel companies. The letter notified the recipient that it is illegal to operate USTS without an approved form of financial responsibility.

10. The Department issued a second letter dated September 2, 2008 to the attention of Mr. Ghuman and Elite Fuel 4 notifying them that the PMMIC insurance had been cancelled and operation of the USTS must cease immediately. The notice stated that failure to submit proof of financial responsibility will require a soil and groundwater site check to determine if a release may have occurred.

11. The Department issued a third notice dated September 24, 2008 to Mr. Ghuman and Elite Fuel 4 again directing them to cease operation of the USTS. The notice also required the recipients to return the tags affixed to the USTS as required by law. If not submitted, the letter notified Mr. Ghuman the Department would conduct a site visit and remove the tags. The UST tags were not removed and sent to the Department.

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12. The Department field office conducted a facility inspection on October 1, 2008. The store clerk stated that a fuel delivery was expected that day. The north and south tanks did not have UST tags affixed to the USTS as required by law.
13. On October 7, 2008, Tanknology Inc. (Tanknology) performed a test of the cathodic protection system. The tester found the system met compliance standards. Tanknology conducted UST system tests on October 8, 2008. The electronic line leak detector tests failed on the three 10,000 gallon USTS but the tank tightness tests passed. The tester recommended replacing the electronic leak detectors with mechanical leak detector units. The tester noted that the alarm lights were not working on the Veeder Root leak detection unit console.
14. On November 3, 2008, the Department exchanged a series of emails with PMMIC indicating that an owner was in the process of trying to obtain UST insurance coverage at this location.
15. On January 30, 2009, the Department again exchanged a series of e-mails regarding the site and the attempts of new owners or operators to reopen this site and five others under different corporate entities controlled by Farrukh Pasha and Sayad Ali.
16. The Department field office visited the site on February 17, 2009 and determined the convenience store was doing business but not selling fuel.
17. By letter dated March 3, 2009, the Department authorized fuel delivery and operation of the USTS. However, the Department file does not have any record that the electronic line leak detectors and Veeder Root automatic tank gauge were repaired after the October 8, 2008 Tanknology tests.
18. The Zurich insurance expired January 27, 2010 and was not renewed. The Department has no record of any subsequent insurance or other financial responsibility mechanism for the facility.
19. The Department contacted the property owner on April 5, 2010 and was told the then current operator, presumed to be Gas Depot, had abandoned the site on February 1, 2010 and the status of the lease assignment between Chieftain Corporation and Iowa Gas was uncertain. The Department has received no communication from Iowa Gas or Gas Depot regarding the operational status of the USTS or maintenance of financial responsibility.
20. The Department has not received annual tank management fees of \$195 that were due January 15, 2010 and no later than April 1, 2010. Late fees of \$250 per UST (3 x \$250 = \$750) are also required to be paid.
21. The Department has not received a certification of temporary closure of the USTS.

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22. The owner and operator failed to conduct a third party compliance inspection during the compliance period of 2008-2009.

IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in chapters 567 IAC 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).

2. Iowa Code section 455B.471(6) defines "owner" of USTS. Iowa Gas has been an UST owner as defined at all times relevant to the violations cited in this order and therefore responsible for compliance with the terms of this order.

3. Iowa Code section 455B.471(5) defines an "operator" of USTS as "a person in control of, or having responsibility for, the daily operation of the underground storage tank." Elite Fuel 4 was the named insured on the PMMIC policy from May 8, 2007 until the PMMIC policy was cancelled effective August 11, 2008. Ish Oberoi in his capacity as president of Elite Fuel 4 was the primary person having control of the daily operation and regulatory compliance of the UST system. Elite Fuel 4 and Ish Oberoi are operators as defined and responsible for compliance with the terms of this order. Gas Depot was an operator of the USTS from at least March 3, 2009 to the present.

4. Owners and operators of USTS must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. 567 IAC 136.22. If insurance is the chosen method, owners and operators must provide proof of coverage through a certificate of insurance or endorsement worded exactly as provided in Department rule. 567 IAC 136.8

5. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. 567 IAC 136.20. They must submit proof of financial responsibility to the Department upon request. 567 IAC 136.19.

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Financial Responsibility Violations

6. Iowa Gas, Elite Fuel 4 and Ish Oberoi are jointly and severally responsible for operating USTS at this location after the PMMIC insurance cancellation date of August 11, 2008. These parties failed to maintain the PMMIC insurance policy which had an effective expiration date of May 7, 2009 without cause. They failed to maintain continuous financial responsibility coverage until the new UST operator Gas Depot began operation in March 2009 and provided proof of financial responsibility coverage with Zurich with an effective date of January 27, 2009 to January 27, 2010.

7. Iowa Gas as the UST owner has failed to maintain continuous financial responsibility on the UST system after the expiration of the Zurich policy on January 27, 2010 which identified Gas Depot as the named insured.

Compliance Inspection Violation

8. UST owners and operators are required to retain a Department certified compliance inspector and conduct a compliance inspection by December 31, 2007. A compliance inspection must then be completed within the two year period from January 1, 2008 to December 31, 2009 with at least a six month separation between the prior compliance inspection. After the biennial inspection for the period 2008-2009, all subsequent inspection must be completed within 24 months of the prior inspection with a minimum separation of 6 months. See 135.20(1).

9. Iowa Gas, Elite Fuel 4 and Gas Depot were owners and operators during 2008-2009 and failed to complete a third party compliance inspection in violation of 567 IAC 135.20.

Annual Tank Management Fees and Late Fees

10. Owners and operators are required to pay a tank registration fee of \$10 on all USTS required to be registered. See Iowa Code section 455B.473(5). Iowa Code section 455B.479 requires owners and operators to pay an annual tank management fee of \$65 per tank on all tanks in excess of 1,100 gallons. Department rules at 567 IAC 135.3(5) require payment of the annual \$65 tank management fee by January 15 of each year. Upon payment an annual tank tag is issued for the period April 1 to March 31. The Department may withhold issuance of tank tags for nonpayment of fees or failure to provide proof of financial responsibility. See Iowa Code section 455B.473(9). It is illegal to accept or deliver fuel into tanks that have not been issued and do not display tank tags. See Iowa Code section 455B.473(8).

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11. Iowa Code section 455B 473(8) provides that owners and operators shall pay a \$250 late fee for failure to register or obtain annual tank tags. Imposition of a late fee does not preclude assessment of an administrative penalty under Iowa Code section 455B 476.
12. Iowa Gas and Gas Depot failed to pay the \$195 in tank fees by January 15 and April 1, 2010. An additional \$750 in late fees ($\$250 \times 3 = \750) is due.

Temporary Closure

13. When an UST system is temporarily closed, Department rules require owners to maintain corrosion protection, release detection and financial responsibility. Release detection is not required if the USTS are emptied to 1 inch of product. After 3 months of temporary closure, owners and operators must submit a certification of temporary closure in accordance with 567 IAC 135.15(1).
14. Release detection is not being maintained at this location and there is no financial responsibility. Iowa Gas as the UST owner has failed to properly temporarily close the USTS and submit a certification of temporary closure.

V. ORDER

THEREFORE, the following are ordered to comply with the following provisions in order to redress violations:

1. Iowa Gas shall immediately empty all product from these USTS and submit to the Department a completed certification of temporary closure form within 14 days of receipt of this order.
2. Iowa Gas and Gas Depot are jointly and severally responsible to pay delinquent tank management fees and late fees. Within 14 days of receipt of this order, they are required to pay \$195 in annual tank management fees and \$750 in late fees (total of \$945) by check made payable to the "Iowa Department of Natural Resources". Any payment must include reference to the UST Registration No. and this order by name and number as provided in the caption.
3. Within 14 days of receipt of this order, Iowa Gas shall submit acceptable proof that the USTS are covered by an approved form of financial responsibility in accordance with chapter 567 IAC 136. If Iowa Gas fails or is unable to obtain financial responsibility coverage by that date, it must retain a certified groundwater professional and complete a site check in accordance with 567 IAC 135.6 and submit a report. If contamination above Department action levels is discovered it must file a notice of claim with Zurich no later than August 19, 2010.

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4. Within 14 days of receipt of this order, Iowa Gas shall retain a Department certified compliance inspector and complete an initial inspection no later than July 30, 2010 and complete all corrective actions within 60 days or an earlier due date if required by Department rules.

5. Iowa Gas, Elite Fuel 4 and Ish Oberoi are jointly and severally responsible to pay a penalty of \$10,000. Gas Depot is jointly and severally required to pay \$4,000 of the total \$10,000 assessment. All payments shall be by check payable to the "Iowa Department of Natural Resources" within 60 days of receipt of this order unless the order is appealed as provided in Division VII below. All checks must be accompanied by a cover letter identifying this order by name and number as provided in the caption.

VI. PENALTY

1. Iowa Code § 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this order.

2. Iowa Code § 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. 567 IAC chapter 10 was adopted by the Commission to implement this provision. Pursuant to rule 567 IAC 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification.

ECONOMIC BENEFIT: There was a lapse in UST insurance coverage from August 11, 2008 until January 27, 2009. These USTS were installed in 1985 and are over 25 years old. The estimated annual premium is about \$500 per tank. Iowa Gas, Elite Fuel 4 and Ish Oberoi have avoided the cost of 5 months of coverage estimated to be ($\$1,500 \times 0.42 = \630). There is also no current financial responsibility on the USTS as of January 27, 2010. Iowa Gas as the current owner is responsible to maintain financial assurance. Assuming coverage is obtained no later than an effective date of this order, Iowa Gas has avoided the cost of 4 months of insurance estimated to be about ($\$1,500 \times 0.33 = \495). For this factor, \$1,125 is assessed. Iowa Gas, Elite Fuel 4 and Ish Oberoi are jointly and severally responsible for \$630 and Iowa Gas is responsible for \$495.

The cost of a compliance inspection is about \$600. Assuming the parties comply with this order, the economic benefit is represented by the interest earned on the cost of compliance over the period of delayed compliance. The Department is reserving the right to assess for this factor.

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GRAVITY: Maintaining continuous coverage on UST systems is one of the most important regulatory requirements. Maintaining insurance coverage even after USTs are taken out of operation is essential since the insurance is "claims made" and not "occurrence" based. Iowa Gas and Elite Fuel 4 continued to operate for some weeks after expiration of the PMMIC policy and allowed a policy to expire such that no coverage was maintained on non-operational tanks between August 2008 and January 2009. Failure to complete of a third party compliance inspection is a separate and distinct violation of the UST operations and leak prevention regulatory scheme. Applying an assessment of up to \$3,000, \$3,000 is assessed jointly and severally against Iowa Gas, Elite Fuel 4 and Ish Oberoi for the financial responsibility violation. \$2,000 is assessed separately against all the named parties for failure to conduct a compliance inspection.

CULPABILITY: Iowa Gas, Elite Fuel 4 and Ish Oberoi own and operate numerous UST facilities in Iowa and other states and should be aware of the financial responsibility requirements and other UST regulations. They allowed the PMMIC policy to be cancelled mid-term and continued to accept fuel and operate the USTs knowing the PMMIC insurance had been cancelled. They attempted to obtain further deliveries of fuel despite written directives that to do so was illegal. For this factor, \$3,000 is assessed against Iowa Gas, Elite Fuel 4 and Ish Oberoi for the financial responsibility violation. The Department sent out notices requiring completion of the compliance inspection to all registered owners. All named parties knew or should have known of this obligation. For this factor, \$3,000 is assessed jointly and severally against Iowa Gas, Elite Fuel 4, Ish Oberoi and Gas Depot.

Total Penalty Assessment: A total of \$6,630 is assessed against Iowa Gas, Elite Fuel and Ish Oberoi for the financial responsibility violation and \$4,000 for the compliance inspection violation. Iowa Gas is also responsible for an additional \$495 penalty. Since this exceeds the statutory \$10,000, \$10,000 is assessed. Gas Depot is jointly and severally responsible for the compliance inspection violation. Therefore, \$4,000 is jointly and severally assessed against Gas Depot, Iowa Gas, Elite Fuel 4 and Ish Oberoi.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476, and chapter 567 IAC 7 which adopts by reference chapter 561 IAC 7, the named parties may file a written notice of appeal to the Commission within 30 days of receipt of this order. The party should file this notice of appeal with the Director of the Department, and must identify the specific portion or portions of this order subject to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code chapter 17A and chapter 561 IAC 7.

VIII. NONCOMPLIANCE

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Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B 477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this order, as well as any subsequent violations in the event the party violates the order, including failure to timely pay any penalty.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of

June, 2010

Copy: Named parties, D. Wornson, Field Office 5, V. I. C.